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Friday, December 03, 1999

HAND DELIVERED

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, SW
TW-A325
Washington, D.C. 20554

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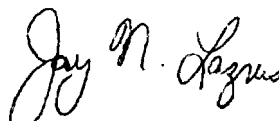
Re: WT Docket No. 98-169
RM-8951

Dear Ms. Salas:

On behalf of Celtronix Telemetry, Inc. ("Celtronix") enclosed please find an original and four (4) copies of its Petition For Reconsideration in the referenced proceeding. Please date stamp the enclosed file copy and return it with the courier to our office.

Please note that the enclosed petition supersedes the one made on behalf of Celtronix on October 12, 1999 in the same proceeding. If you have any questions regarding this matter, please telephone me at (202) 371-0062.

Very truly yours,


Jay N. Lazrus

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
CELTRONIX TELEMETRY, INC.)
)
Amendment of Part 95 of the)
Commission's Rules To Provide)
Flexibility in the 218-219 MHz)
Service)

WT Docket No. 98-169
RM-8951

To: The Commission

PETITION FOR RECONSIDERATION

Celtronix Telemetry, Inc. ("Celtronix"), by its attorneys and pursuant to Section 1.429, hereby seeks reconsideration of the Commission's Report and Order and Memorandum Opinion and Order ("Order") released on September 10, 1999 (FCC 99-239) in the captioned matter. In support of this petition, the following is respectfully submitted.

Celtronix seeks reconsideration with respect to the payment options described at paragraphs 33 through 54 of the Order. There, the Commission established three payment options for 218-219 MHz Service licensees: (i) Reamortization and Resumption of Payments; (ii) Amnesty and (iii) Prepayment. Order at paras. 40-53. As shown below, the Commission should reconsider its Order and add a fourth option: disaggregation. The disaggregation option would permit a licensee to turn back one-half of the spectrum authorized by a particular license in a particular market and, in exchange, the licensee would have its original payment obligation reduced by one-half, with credits for payments

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already made applied to its payment obligation on the one-half of the licensed spectrum retained by the licensee.

Disaggregation of 218-219 MHz Service spectrum is technically feasible. Each licensed frequency segment in the 218-219 MHz Service (Segment A and Segment B) represents one-half megahertz of spectrum, i.e., 500 kHz. This is several times the amount of spectrum authorized by individual licenses in other services. In the 220 MHz SMR service, for example, individual nationwide and "Economic Area" licensee are licensed for a total of 50 kHz. Each "Economic Area Group" licensee is licensed for a total of 75 kHz. Further, the Order adopted rules allowing disaggregation (as well as partitioning) in the 218-219 MHz service, acknowledging that it had done so in other services. Order at para. 92. The Commission concluded that disaggregation, among other benefits, would encourage parties to use spectrum more efficiently and speed service to unserved and under served areas. Id. at para. 94. Celtronix has confirmed that disaggregation is, in fact, technically feasible for its system in Norfolk-Virginia Beach, and that the data and telemetry services it can provide over its 218-219 MHz network can be provided using 250 kHz of spectrum, which still amounts to 5 times the amount of spectrum authorized under an "Economic Area" 220 MHz SMR license, and more than 3 times the amount authorized under an "Economic Area Group" 220 MHz license.

Permitting disaggregation as a payment option would serve the public interest. It will allow licensees, like Celtronix, to continue to develop innovative and spectrally efficient services by affording payment relief and the ability to redirect resources to the expansion and development of service offerings. Further, disaggregation was adopted as an option for Block C Personal Communication Services ("PCS") licensees.¹ Given the technical feasibility of disaggregation and adoption of rules to permit it in the 218-219 MHz Service, and in view of the Commission's adoption of disaggregation as a payment option for Block C PCS licensees, it would be fair, consistent and in the public interest for the Commission to adopt disaggregation as a payment option for 218-219 MHz licensees. It should do so.

The disaggregation payment option for 218-219 MHz licensees should be simple to administer. To select this option, a licensee would simply designate which part of its licensed frequency segment -- the upper part or the lower part -- it was turning back to the Commission to be included in the next

¹ Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications (PCS) Licensees, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rule Making, 12 FCC Rcd 16436, 16450 (1997); and Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, Order on Reconsideration of the Second Report and Order, 13 FC Rcd 8345, 8358-60 (1998).

auction.² Once that election was made, the Commission would calculate the licensee's new payment obligation by reducing its original winning bid by one-half and applying all applicable credits. Just as the Commission did for Block C PCS licensees electing disaggregation, one of the credits that should apply against the licensee's remaining payment obligation is a credit of 40% of the licensee's downpayment applicable to the disaggregated, returned spectrum.³ Further, 100% of all installment payments previously made by the licensee should be applied to the remaining payment obligation.

Celtronix also seeks reconsideration of the Commission's decision not to refund any portion of the down payment to licensees electing the amnesty option. Order at para. 49. This decision results in inconsistent treatment of 218-219 MHz licensees. A licensee electing prepayment for some licenses and amnesty for others receives a credit of 85% of its downpayment against its payment obligation for the licenses it chooses to retain. Order at para. 53. Effectively that licensee is only paying a 3% default payment on its returned spectrum whereas a

² For a licensee with segment A, (218.0-218.5 MHz), the lower part would be 218.0-218.25 and the upper part would be 218.25-218.5. For a licensee with segment B, (218.5-219.0 MHz), the lower part would be 218.5-218.75 and the upper part would be 218.75-219.0.

³ If applicable, the Remedial Bidding Credit described in the Order would also be applied against the remaining payment obligation.

licensee choosing amnesty for all of its licenses effectively is paying a 20% penalty. This arbitrary result is particularly burdensome for licensees such as Celtronix who hold only one license and therefore cannot elect to keep some licenses and return others, thereby reducing its penalty.

Celtronix also seeks clarification on the following aspects of the Commission's proposed payment options.

First, the Commission states that it "will reamortize a licensee's entire outstanding balance, including all then-accrued installment payments, rather than requiring all such arrearages to be paid in the first payments following adoption of the Report and Order." Order at para. 43. It is not clear whether this means that the amortization term for calculating the new installment payments will be: (i) the entire ten year license term with all the payments for the expired part of the license term due upon resumption of payments or (ii) the years remaining in the license term at time of resumption of installment payments.

For example, assume that the balance owed by a licensee is \$100,000 and there are 5 years remaining in the license term upon payment resumption. If the reamortization is over the entire ten year term, then payments are \$10,000 per year. If payments resume in year six, the licensee will owe \$50,000 (payments due from the first five years), plus \$10,000, the payment due in the sixth year. On the other hand, if the reamortization is over the

remaining 5 years of the license term, then the licensee will owe \$20,000 (\$100,000/5) in year six. In order to meet the Commission's stated goal of ensuring that licensees are not burdened with insurmountable first payments, Celtronix respectfully requests that the Commission clarify this issue by declaring that the reamortization is based on creating level payments over the remaining term of the license. Order at para. 43.

Second, the Commission states that it will capitalize all accrued and unpaid interest into the principal amount as of the election date. Order at para. 44. However, the rule adopted by the Commission merely states that all unpaid interest from the grant date through the election date will be capitalized into the principal. Order at Appendix B, Section 95.816(b). Arguably, unpaid interest means all interest that was due under the original payment schedule between the Commission and the licensee, but which has not been paid, whereas accrued and unpaid interest could include that interest, plus interest calculated from the due dates of the suspended payments. Again, in order to meet the Commission's stated goal of ensuring that licensees are not burdened with insurmountable first payments, Celtronix respectfully requests that the Commission clarify this issue by declaring that Section 95.816(b) means that only unpaid interest that was due under the original installment payment schedule will be capitalized into the principal.

Third, the Commission states that it will apply a 25% bidding credit to the account of every winning bidder in the 1994 auction that met the small business qualifications for that auction. Order at para. 61. However, it is unclear whether this means that a licensee that met the small business qualifications for that auction and now elects amnesty will receive a 25% refund of its downpayment. Parity among small business licensees suggests that a small business licensee electing amnesty is just as entitled to the benefit of the credit as a licensee electing resumption of payments. Celtronix seeks clarification on this issue.

As a final matter, on January 30, 1998, Celtronix filed a petition for reconsideration of the Commission's Third Report and Order in WT Docket No. 98-82 (released December 31, 1997) which adopted new rules that eliminated grace period requests in favor of automatic grace periods. In its January 30, 1998 petition for reconsideration, which remains pending, Celtronix argued that the Commission's new rules constituted impermissibly retroactive rulemaking as applied to 218-219 MHz licensees. Celtronix maintains its position that 218-219 MHz licensees should continue to have the ability to request grace periods beyond "automatic" ones. Thus, in the above-captioned proceeding, Celtronix hereby requests the Commission to reconsider its Order and exempt 218-219 MHz licensees who choose either the reamortization/resumption of payment option or the disaggregation option proposed herein

from the new installment payment rules, and permit such licensees to request additional grace periods following automatic grace periods. This Commission has the responsibility to facilitate the development of new communications technologies. As the Commission has acknowledged, the 218-219 MHz Service did not fulfill the Commission's originally intended purpose in allocating the spectrum for interactive television. Serious licensees like Celtronix essentially had to start over again two years after the 1994 auction once 218-219 MHz interactive television technologies failed. (What the Commission actually auctioned in 1994 were developmental licenses rather than licenses for a technically and commercially viable service -- completely unlike PCS, for example, where equipment was available to auction winners.) Only in the past year has Celtronix constructed a 218-219 MHz Service network in its market which is only now beginning to attract a customer base that can sustain operations. Yet, much sooner before profitability, the company will be facing huge license payments under the Commission's new rules which do not accommodate further grace periods beyond the automatic ones. Celtronix is not implying that the Commission, if it permits 218-219 MHz licensees to request additional grace periods, should grant such requests routinely. Rather, in the instant case of a fledgling new service that for all intents and purposes is still in the developmental stage, the Commission should take a careful look at the specifics of individual cases

where the 218-219 licensee is making serious, best efforts to move the service from the developmental stage to bona fide commercial operations. Thus, a 218-219 MHz licensee that is making no sustained effort to deploy and test equipment with prospective customers should receive no additional grace periods. In contrast, a company like Celtronix, whose financial obligations for its 218-219 MHz network infrastructure, *not* including license payments, amount to more than one-half million dollars for what is still a developmental service, deserves different treatment from this Commission, and should not be thrown out of the industry under the Commission's new one-size-fits-all installment payment rules that eliminate additional grace periods. Under the circumstances facing the 218-219 MHz industry, the new installment payment rules still amount to impermissible retroactive rulemaking regardless of the payment options described in the Order. Accordingly, deserving 218-219 MHz licensees electing reamortization/prepayment or the disaggregation proposed herein should still be able to obtain additional grace periods beyond the automatic ones.

For the reasons stated above, Celtronix requests that the Commission adopt disaggregation as a payment option, reamortize payments based on the remaining years in the new license term, clarify issues described herein, and permit 218-219 MHz licensees to request additional grace periods beyond the automatic ones.

Respectfully submitted,
CELTRONIX TELEMETRY, INC.

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Its Attorneys

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December 3, 1999